



STATE BOARD OF EQUALIZATION

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October 24, 1988

Dear Mr. :

Re: Section 63.1 - Revenue and Taxation Code

This is in response to your letter to me of September 6, 1988 in which you request our opinion with respect to the following facts set forth in your letter.

A transfer of real property will be made from husband and wife to a child in trust for the benefit of the child during his or her lifetime. Under the terms of the trust, the child will be the sole beneficiary of the trust and the income and principal will either be paid in the absolute discretion of the trustee for the benefit of such child (and no other beneficiary during the child's lifetime) or income will be paid at least annually for the benefit of the child and principal will be paid according to need. At the child's death, the trust will continue for the benefit of his or her children.

You have asked whether the transfer described above is excluded from change in ownership under section 63.1 as a transfer between parents and child.

As you know, Proposition 58 amended article XIII A of the California Constitution to provide among other things that the terms "purchase" and "change in ownership" do not include the purchase or transfer of the principal residence and the first \$1 million of the full cash value of other real property between parents and children. Chapter 48 of the Statutes of 1987 (AB 47) is the implementing legislation for Proposition 58. Chapter 48 added section 63.1 to the Revenue and Taxation Code section and applies to purchases and transfers of real property completed on or after November 6, 1986.

Since the enactment of section 63.1, it has been our position that Proposition 58 and section 63.1 are applicable to transfers

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through the medium of a trust provided the requirements of those provisions are otherwise satisfied, even though transfers in trust are not specifically mentioned in either Proposition 58 or section 63.1. Recently, however, section 63.1 was amended to expressly include transfers in trust for the beneficial use of a parent or child of the trustor as transfers between parents and children. See Chapter 700 of the Statutes of 1988 (SB 1736).

It has consistently been our position that a transfer in trust is excluded from change in ownership under section 63.1 if the eligible transferee is the present beneficiary of the trust. It has further been our position that one may be a present trust beneficiary even though the right to receive income is discretionary as long as no one else presently has a right to income or principal.

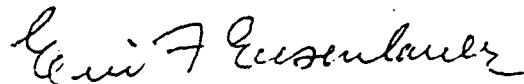
In this case, the child will be the sole trust beneficiary and will either receive income and principal in the absolute discretion of the trustee or the trust income paid at least annually with principal paid according to need. In either case, we are of the opinion that the child is the sole present beneficiary of the trust and that the proposed transfer would be excluded from change in ownership under section 63.1 subject to the limitations specified therein.

Upon the child's death, section 63.1 would not be applicable in our opinion because the transfer occurring at that time would be between grandparents and grandchildren.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the described property will be assessed in a manner consistent with the conclusion stated above.

If we can be of further assistance in this matter, please let us know.

Very truly yours,



Eric F. Eisenlauer  
Tax Counsel

EFE:cb  
1595D

cc: Mr. Richard H. Ochsner  
Mr. Robert H. Gustafson  
Mr. Verne Walton